In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 1096

HAIR INDUSTRY, LTD., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

On October 28, 1963, the Commissioner of Internal Revenue issued three separate summonses pursuant to Section 7602 of the Internal Revenue Code of 1954, directing petitioner Ruth Rosen to appear before an officer of the Internal Revenue Service and to produce *corporate* books and records belonging to three corporations of which she was vice president (R. 11a, 13a, 15a, 21a).[1] No personal papers were sought. At petitioner's request, it was agreed that Ruth Rosen's husband, George (also a petitioner herein), who was president of the three corporations being investigated, could appear in her stead (R. 23a–24a).

[1] "R." references are to the appendix filed by the appellants in the court of appeals.

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Mr. Rosen appeared at the time and place designated in the summons and admitted that the corporate records covered by the summons were in existence and in his possession (R. 17a). However, he refused to produce these corporate records on the ground that to do so would violate his personal privilege against self-incrimination (R. 17a).

The government then moved pursuant to Sections 7402(b) and 7604(a) of the Code to compel the individual petitioners to produce the corporate records (R. 3a–4a). Petitioners' sole ground for opposition was their contention that the corporate records were clothed with Mr. Rosen's personal privilege against self-incrimination (R. 24a). The evidence showed that prior to 1949 the stock of Hair Industry, Ltd. (which holds all the stock of the other two corporations here involved) was owned by George Rosen, his brother and his sister; in 1949, he acquired their interests and has since been sole shareholder (20a). The district court rejected petitioners' argument and ordered production of the corporate records; the Second Circuit affirmed *per curiam* (Pet. 1A–3A). 340 F. 2d 510.

This Court has consistently held that a stockholder, officer or other custodian of corporate records may not interpose his personal privilege against self-incrimination when called upon to produce corporate records in his possession. *Wilson* v. *United States*, 221 U.S. 361; *Wheeler* v. *United States*, 226 U.S. 478, 490; *Grant* v. *United States*, 227 U.S. 74, 79–80; *Essgee Co.* v. *United States*, 262 U.S. 151; *United States* v. *White*, 322 U.S. 694, 700; *Nilva* v. *United States*, 352

U.S. 385, 392; *Curcio* v. *United States*, 354 U.S. 118, 122, 124–125, 128.

In the *Grant* case, *supra*, this Court was squarely faced with the precise issue here presented; it held that the privilege was unavailable even when the custodian was "the sole stockholder" of the corporation. 227 U.S. at 77, 80.[2]

Contrary to petitioners' suggestion (Pet. 8–10), *United States* v. *White*, *supra*, in no way departs from this settled principle. In *White* the court not only explicitly reaffirmed the principles enunciated in the above cases, but extended the principle even further, holding that in some situations the officers or members of even an *unincorporated* association may be denied the privilege against self-incrimination with respect to association records. Therefore, contrary to petitioners' assertions, the *White* case was not a repudiation of or limitation on the well established holdings of this Court regarding application of a personal privilege to *corporate* records.

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[2] This same view was recently approved by the Ninth Circuit in *Wild* v. *Brewer*, 329 F. 2d 924, certiorari denied, 379 U.S. 914, and is in accord with the prior Second Circuit decisions in *United States* v. *Fago*, 319 F. 2d 791, 792–793, certiorari denied, 375 U.S. 906, and *United States* v. *Guterma*, 272 F. 2d 344, 346.

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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